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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/026,862	12/20/2001	Andrea Susan Wulz	16,891	1820

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EXAMINER	
STEPHENS, JACQUELINE F	

ART UNIT	PAPER NUMBER
3761	

DATE MAILED: 09/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/026,862	WULZ ET AL.	
	Examiner	Art Unit	
	Jacqueline F Stephens	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-24* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-24* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *4,5* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Claim Objections

1. Claims 6, 7, 8, and 11 are objected to because of the following informalities:

- Claim 6, in line 2 a additional" should read "an additional".

  Claim 6 recites the limitation "the topsheet" in line 3. There is insufficient antecedent basis for this limitation in the claim.

- Claims 7 and 11 recites the limitation "the backsheet" in line 1. There is insufficient antecedent basis for this limitation in the claim.

- Claim 8 recites the limitation "the highly breathable laminate" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-5, 7-9, 12, 13, and 15, as best understood by the examiner, are rejected under 35 U.S.C. 102(b) as being anticipated by Meyer et al. USPN 4798603.

As to claim 1, Meyer discloses an absorbent article 10 which defines a front waist section 32, a rear waist section 32, and an intermediate section 34 which interconnects

said front and rear waist sections (Figure 3), said absorbent article comprising: an absorbent material 16 containing, at least in part, a superabsorbent (col. 5, lines 23-30); and a second material 18 (col. 9, line 58 through col. 10, line 16); wherein one or more regions of the article, such as the transport layer 18 contains less absorbent material than other regions of the article. The second material in layer 18 is positioned in at least one of the one or more regions of article, which contain less absorbent material, Figure 3.

As to claim 2, these limitations are directed to an intended use of the article. Intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). If the prior art structure is capable of performing the intended use, then it meets the claim limitations. The invention of Meyer meets the structural limitations of claim 1. Additionally, Meyer discloses the reduction of absorbent material and the positioning of the second material in one or more regions of the article promote flow of an insulting liquid from the one or more regions of the article containing less absorbent material to other regions of the article so as to change the fluid profile in the article (col. 2, lines 13-34).

As to claim 3, Meyer discloses the absorbent material (superabsorbent) is absent from one or more regions of the article in that the superabsorbent is not present in the waist band or fastener areas (Figure 3).

As to claim 4, Meyer discloses the intermediate section comprises, at least in part, a crotch region. The transport layer 18, represents a crotch region as broadly as claimed in that it resides in the intermediate section of the article. The absorbent material is absent from layer 18.

As to claim 5, Meyer discloses the second material, layer 18 is selected from one or more of the group consisting of surge, tissue, or airlaid materials (col. 9, line 29 through col. 10, line 14).

As to claim 7, Meyer discloses the backsheet may be comprised of a highly breathable laminate (col. 4, lines 12-17).

As to claim 8, Meyer discloses the highly breathable laminate is a film/nonwoven laminate (col. 4, lines 24-27).

As to claim 9, Meyer discloses the nonwoven is a spunbond (col. 4, lines 24-27).

As to claim 12, Meyer discloses a composite system, which defines a front waist section, a rear waist section, and an intermediate section, which interconnects, said front and rear waist sections (Figure 3). The system comprises: a superabsorbent-free material in that Meyer discloses the material for layer 18, which do not include a superabsorbent material (col. 9, line 29 through col. 10, line 14); and an absorbent 16, containing, at least in part a superabsorbent (col. 5, lines 23-30). The absorbent is absent from one or more regions of the article in that the superabsorbent is not present in the waist band or fastener areas (Figure 3). The superabsorbent-free material in layer 18 is positioned in one or more regions of article adjacent the absorbent material, Figure 3.

As to claim 13, these limitations are directed to an intended use of the article. Intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). If the prior art structure is capable of performing the intended use, then it meets the claim limitations. The invention of Meyer meets the structural limitations of claim 12. Additionally, by determining the appropriate materials and pore size gradient between layers, Meyer discloses the absence of absorbent in one or more regions of the article and the presence of the superabsorbent-free material in those regions is capable of promoting a reduction in time to move the insult from the superabsorbent-

free material to the absorbent by changing the fluid profile in the article (col. 2, lines 13-34 and col. 9, lines 17 through col. 10, line 11).

As to claim 15, Meyer discloses the superabsorbent-free material comprises surge, tissue or airlaid materials (col. 9, line 29 through col. 10, line 14).

4. Claims 1 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Runneman et al. USPN 5391160.

As to claim 1, Runneman discloses an absorbent article, which defines a front waist section, a rear waist section, and an intermediate section which interconnects said front and rear waist sections (Figure 1), said absorbent article comprising: an absorbent material 4 containing, at least in part, a superabsorbent (col. 3, lines 20-23); and a second material 5 (col. 3, lines 33-41); wherein one or more regions of the article, contains less absorbent material than other regions of the article and the second material 5 is positioned in at least one of the one or more regions of article, which contain less absorbent material, Figure 2.

As to claim 6, the article further comprises one or more of the following: an additional surge material 6 (col. 3, lines 19-29), said additional surge material being positioned between the topsheet and the second material or the absorbent material (Figure 2); and vapor barriers 7 (col. 4, lines 21-34). The vapor barriers are positioned

between the absorbent 4 and the topsheet 1; wherein the vapor barriers are capable of reducing the amount of moisture exposed to the skin of a wearer.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Runneman in view of Mayer USPN 5853401 . Runneman discloses the present invention substantially as claimed. However Runneman does not disclose the vapor

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Runneman in view of Mayer USPN 5853401 . Runneman discloses the present invention substantially as claimed. However Runneman does not disclose the vapor barrier is a film. Mayer discloses an absorbent article comprising an absorbent material 50 and a vapor barrier 35 between the topsheet 32 and absorbent 50 (col. 7, lines 60-65 and Figure 3A). The vapor barrier comprises a thermoplastic film (Mayer discloses the vapor barrier is constructed of the same materials as the backsheet col. 10, lines 5-20) for the benefit of containing fluids. Runneman uses the vapor barriers 7 to contain fluids and prevent liquids from flowing laterally to reduce the risk of lateral leakage. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the vapor barriers of Runneman to include a film for the purpose of preventing exudates from inadvertently bypassing the absorbent material 4.

10. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Meyer. Meyer discloses the present invention substantially as claimed. However, Meyer does not disclose the insult is removed from the superabsorbent-free material to the absorbent material in less than about 2 minutes. The present application has described suitable materials for the topsheet, transport layer, and absorbent body (specification pages 16-22). Meyer discloses similar materials for the topsheet, transport layer, and

examiner can not determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention but has basis for shifting the burden of proof as in *In re Fitzgerald,* 619 F.2d 67, 70 205 USPQ 594, 596 (CCPA 1980). In the present case, the reference has met the structural requirements of claim 12.

9. Claims 11, 16, 17, and 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meyer in view of Good et al. USPN 5846056.

As to claim 11, Meyer discloses the present invention substantially as claimed. However, Meyer does not disclose the backsheet has a Water Vapor Transmission Rate of at least 2,500 g/m.sup.2/24 hr. Good discloses a backsheet having a water vapor transmission rates from about 1000 to about 5000 g/sq.m/24hr for the benefit of allowing sufficient transfer of vapor to reduce levels of skin hydration and rash (Good col. 8, lines 23-62). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the backsheet of Meyer with the backsheet of Good for the benefits disclosed in Good.

As to claims 16, and 22-24, Meyer/Good discloses a disposable absorbent article 10, which comprises: a liquid-impermeable, vapor-permeable backsheet which defines a Water Vapor Transmission Rate of at least about 1000 grams per square meter per 24 hours calculated according to a Water Vapor Transmission Test (Good col. 8, lines 23-62), a liquid permeable topsheet14; an absorbent body 16 located between said

backsheet and said topsheet. The absorbent body located in one or more regions of the article (Meyer Figure 3). The article further comprising a second material 18 located between the backsheet and the topsheet. The second material is positioned in one or more regions (the layer 18 defines a region) of the article where the absorbent body is not present (Meyer Figure 3).

As to claim 17, these limitations are directed to an intended use of the article. Intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). If the prior art structure is capable of performing the intended use, then it meets the claim limitations. The invention of Meyer/Good meets the structural limitations of claim 16. Additionally, Meyer/Good discloses the second material allows fluid to be moved away from an insult area of the absorbent article to a region of the absorbent article where the absorbent is located so as to change the fluid profile in the diaper (Meyer col. 2, lines 13-34).

As to claim 21, Meyer/Good discloses the second material comprises surge, tissue or airlaid materials (Meyer col. 9, line 29 through col. 10, line 14).

10. Claims 16, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Runneman in view of Good.

As to claim 16, Runneman discloses the present invention substantially as claimed. However, Runneman does not disclose the backsheet has a Water Vapor Transmission Rate of at least 2,500 g/m.sup.2/24 hr. Good discloses a backsheet having a water vapor transmission rates from about 1000 to about 5000 g/sq.m/24hr for the benefit of allowing sufficient transfer of vapor to reduce levels of skin hydration and rash (Good col. 8, lines 23-62). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the backsheet of Runneman with the backsheet of Good for the benefits disclosed in Good.

Runneman/Good discloses a disposable absorbent article, which comprises: a liquid-impermeable, vapor-permeable backsheet which defines a Water Vapor Transmission Rate of at least about 1000 grams per square meter per 24 hours calculated according to a Water Vapor Transmission Test (Good col. 8, lines 23-62), a liquid permeable topsheet 1; an absorbent body 4 located between said backsheet and said topsheet. The absorbent body located in one or more regions of the article (Runneman Figure 2). The article further comprising a second material 7 located between the backsheet and the topsheet. The second material 7 is positioned in one or more regions of the article where the absorbent body is not present (Runneman Figure 2).

As to claim 18, the absorbent body is absent from the insult area of the absorbent article (Runneman Figure 2). The examiner considers the insult area to be the central region of the absorbent article.

As to claim 19, Runneman/Good discloses a vapor barrier 7(col. 4, lines 21-134) positioned between the absorbent 4 and the topsheet 1.

11. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Runneman in view of Good as applied to claims 16 and 19 above, and further in view of Mayer . Runneman/Good discloses the present invention substantially as claimed. However Runneman/Good does not disclose the vapor barrier is a film. Mayer discloses an absorbent article comprising an absorbent material 50 and a vapor barrier 35 between the topsheet 32 and absorbent 50 (col. 7, lines 60-65 and Figure 3A). The vapor barrier comprises a thermoplastic film (Mayer discloses the vapor barrier is constructed of the same materials as the backsheet col. 10, lines 20) for the benefit of containing fluids. Runneman/Good uses the vapor barriers 7 to contain fluids and prevent liquids from flowing laterally to reduce the risk of lateral leakage. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the vapor barriers of Runneman to include a film for the purpose of preventing exudates from inadvertently bypassing the absorbent material 4.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F Stephens whose telephone number is (703) 308-8320. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703)308-1957. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Jacqueline F Stephens
Examiner
Art Unit 3761

September 2, 2003

WEILUN LO
SUPERVISORY PATENT EXAMINER
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